

## **ARIZONA CODE OF JUDICIAL ADMINISTRATION**

### **Part 5: Court Operations**

#### **Chapter 3: Court Security**

##### **Section: 5-305: Use of Force**

**A. Definitions.** The following definitions apply to this section:

“Administrator” means superior court administrator, justice court administrator, or municipal court administrator.

“Deadly physical force” means “force that is used with the purpose of causing death or serious physical injury or in the manner of its use or intended use is capable of creating a substantial risk of causing death or serious physical injury” as provided in A.R.S. § 13-105(14).

“Deadly weapon” means “anything designed for lethal use, including a firearm” as provided in A.R.S. § 13-105(15).

“Department” means the office, department, or division of the court responsible for providing court security.

“Director” means the Administrative Director of the Administrative Office of the Courts or the director’s designee.

“Impact weapon” means an approved expandable baton or other authorized equipment, including a flashlight or other device, that is used to control a subject’s actions, to defend against an attack or to deliver a stunning blow.

“Intentional discharge” means a non-training discharge of a department-issued firearm by an officer who is on or off duty, where the officer believes the firearm is loaded and consciously performs all actions necessary to cause a discharge.

“Life-threatening” means actions that may cause serious bodily injury or death.

“Officer” or “court security officer” means any person providing court security, whether part- or full-time, or a person who has court security duties whether by job title, job description, contract, or other agreement.

“Off duty” means the period during which the officer is not performing duties or functioning at the direction of the department.

“Presiding judge” means, for superior court, justice courts, and consolidated justice/municipal courts, the superior court presiding judge or a designee who may be an administrator; for municipal courts, the municipal court presiding judge or a designee who may be an administrator; for appellate courts, the chief justice or chief judge or a designee.

“Security director” means the individual designated by a presiding judge to oversee security operations, whether part- or full-time.

“Serious physical injury” means “physical injury that creates a reasonable risk of death, or that causes serious and permanent disfigurement, serious impairment of health or loss or protracted impairment of the function of any bodily organ or limb” as provided in A.R.S. § 13-105(39).

“Slight force” means reasonable force used to place in restraints, control, or direct the movement of a subject that is cooperative or passively resistant.

**B. Authority.** Article 6, Section 3 of the Arizona Constitution authorized the supreme court to establish rules governing the use of force by court security officers.

**C. Purpose.** This section provides guidelines for the use of force by court security officers, details of force options, and reporting requirements.

**D. Use of Force.**

1. Officers shall base use of force decisions upon the facts known to them at the time of the incident and whether, under the circumstances, the use and degree of force is reasonable. An officer is not obligated to use force in any situation that the officer determines to be unsafe. In the course of their duties, the permissible use of force by officers is limited to that force which is necessary and only to the degree required for:
  - a. Assisting law enforcement, if requested.
  - b. Preventing loss of life or serious bodily injury to self or others.
  - c. Preventing loss of property as allowed by statute.
2. An officer’s decision to use force or control will be based on the totality of the circumstances known to the officer at the time of the incident, their training, and the subject’s actions. Circumstances that influence the level of force used by officers may include, but are not limited to:
  - a. The nature of the offense.
  - b. The behavior and actions of the subject (i.e., resistive, aggressive acts).
  - c. Physical size and conditioning of the subject and officer.
  - d. Age of the subject and the officer.
  - e. The feasibility and availability of alternative responses.
  - f. The availability of additional officers or law enforcement personnel.
3. Levels of resistance by a subject include:

- a. Psychological intimidation: includes non-verbal cues indicating the subject's attitude, appearance and physical readiness, such as clenching the fists, widening the foot stance, which may warn officers of an individual's emotional state and potential for violence even when the subject has not offered any verbal threats.
  - b. Verbal non-compliance: verbal responses indicating the subject's unwillingness to comply with directions, this may include verbal threats.
    - (1) A person has a constitutionally protected right to express verbal protests to an officer. Generally, speech directed at an officer is protected by the First Amendment.
    - (2) Fighting words are not protected speech, as a general rule. The appropriate reaction to verbal threats made by a subject will depend on the specific facts faced by the officer.
  - c. Passive resistance: physical actions that do not directly prevent an officer's attempt at control, usually in the form of a relaxed or "dead weight" posture intended to make the officer lift, pull or otherwise move the subject to establish control.
  - d. Defensive resistance: physical actions that attempt to prevent the officer's control but make no direct attempt to harm the officer, such as when the subject attempts to push or pull away in a manner that does not allow the officer to establish control without striking the officer.
  - e. Active aggression: physical assault on the officer or a third person, where the subject prepares to strike, strikes, or uses techniques in a manner that may result in injury to the officer or a third person.
  - f. Aggravated active aggression (deadly force): assaultive acts of aggression directed towards an officer or a third person that are likely to cause serious injury or death.
4. An officer shall determine that physical force is warranted under the circumstances provided by statute before using physical force in the performance of the officer's duties.
- a. Justification: execution of public duty (A.R.S. § 13-402) provides:
    - A. Unless inconsistent with the other sections of this chapter defining justifiable use of physical force or deadly physical force or with some other superseding provision of law, conduct which would otherwise constitute an offense is justifiable when it is required or authorized by law.
    - B. The justification afforded by subsection A also applies if:
      - 1. A reasonable person would believe such conduct is required or authorized by the judgment or direction of a competent court or tribunal or in the lawful execution of legal process, notwithstanding lack of jurisdiction of the court or defect in the legal process; or

2. A reasonable person would believe such conduct is required or authorized to assist a peace officer in the performance of such officer's duties, notwithstanding that the officer exceeded the officer's legal authority.

b. Justification; use of physical force (A.R.S. § 13-403) provides in part:

The use of physical force upon another person which would otherwise constitute an offense is justifiable and not criminal under any of the following circumstances:

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3. A person responsible for the maintenance of order in a place where others are assembled or on a common motor carrier of passengers, or a person acting under his direction, may use physical force if and to the extent that a reasonable person would believe it necessary to maintain order, but such person may use deadly force only if reasonably necessary to prevent death or serious bodily injury.

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c. Justification; self defense (A.R.S. § 13-404) provides:

A. Except as provided in subsection B of this section, a person is justified in threatening or using physical force against another when and to the extent a reasonable person would believe that physical force is immediately necessary to protect himself against the other's use or attempted use of unlawful physical force.

B. The threat or use of physical force against another is not justified:

1. In response to verbal provocation alone; or
2. To resist an arrest that the person knows or should know is being made by a peace officer or by a person acting in a peace officer's presence and at his direction, whether the arrest is lawful or unlawful, unless the physical force used by the peace officer exceeds that allowed by law; or
3. If the person provoked the other's use or attempted use of unlawful physical force, unless:
  - (a) The person withdraws from the encounter or clearly communicates to the other his intent to do so reasonably believing he cannot safely withdraw from the encounter; and
  - (b) The other nevertheless continues or attempts to use unlawful physical force against the person.

d. Justification; use of deadly physical force (A.R.S. § 13-405) provides:

A. A person is justified in threatening or using deadly physical force against another:

1. If such person would be justified in threatening or using physical force against the other under § 13-404, and
  2. When and to the degree a reasonable person would believe that deadly physical force is immediately necessary to protect himself against the other's use or attempted use of unlawful deadly physical force.
- B. A person has no duty to retreat before threatening or using deadly physical force pursuant to this section if the person is in a place where the person may legally be and is not engaged in an unlawful act.
- e. Justification; defense of a third person (A.R.S. § 13-406) provides:
- A person is justified in threatening or using physical force or deadly physical force against another to protect a third person if, under the circumstances as a reasonable person would believe them to be, such person would be justified under section 13-404 or 13-405 in threatening or using physical force or deadly physical force to protect himself against the unlawful physical force or deadly physical force a reasonable person would believe is threatening the third person he seeks to protect.
- f. Justification; use of physical force in defense of property (A.R.S. § 13-408) provides:
- A person is justified in using physical force against another when and to the extent that a reasonable person would believe it necessary to prevent what a reasonable person would believe is an attempt or commission by the other person of theft or criminal damage involving tangible movable property under his possession or control, but such person may use deadly physical force under these circumstances as provided in §§ 13-405, 13-406 and 13-411.
- g. Justification; use of physical force in law enforcement (A.R.S. § 13-409) provides:
- A person is justified in threatening or using physical force against another if in making or assisting in making an arrest or detention or in preventing or assisting in preventing the escape after arrest or detention of that other person, such person uses or threatens to use physical force and all the following exist:
1. A reasonable person would believe that such force is immediately necessary to effect the arrest or detention or prevent the escape.
  2. Such person makes known the purpose of the arrest or detention or believes that it is otherwise known or cannot reasonably be made known to the person to be arrested or detained.
  3. A reasonable person would believe the arrest or detention to be lawful.
- h. In addition to the statutes identified in (a) through (g) above, A.R.S. § 12-299.10(B) authorizes certified court security officers to use force in the following circumstances:

1. With reasonable cause, detain a person on the premises for a reasonable time to contact a law enforcement officer and maintain the safety and well-being of a person who is in a judicial branch facility, on judicial branch grounds or where a court is convening.
2. Refuse to allow a weapon or unlawful material in a judicial branch facility, on judicial branch grounds or where a court is convening.
3. Respond to threats to and emergencies involving a judicial branch employee in a judicial branch facility, on judicial branch grounds or where a court is convening.

**E. Officer Response – Use of Force.** An officer's use of force shall be reasonable to control a subject and accomplish lawful objectives. Use of force options include:

1. Officer Presence: Officers are clearly visible, and their authority is established by their presence in uniform or by clearly displaying a badge.
2. Verbal Direction: Communications directed toward controlling the actions of a subject, including commands, instructions, or warnings.
3. Empty Hand Control: Techniques that cover a number of subject control methods, divided into two categories:
  - a. "Soft" control techniques presenting a minimal risk of injury, generally used to control passive or defensive resistance, however soft control techniques can be utilized for any level of resistance if tactically possible and legally permissible. Standard handcuffing is a soft control technique.
  - b. "Hard" control techniques may cause minimal injury, i.e., striking techniques using the hands or feet. A "take-down" is the forceful direction of the suspect to the ground and is considered a hard control technique.
4. Intermediate Weapons: When intermediate weapons are used, injury to the subject is likely to occur and appropriate medical care shall be provided once the situation is secure. Intermediate weapons include weapons such as oleoresin capicum (OC) aerosol chemical spray, impact weapons and CEWs, and offer a method of controlling subjects when deadly force is not justified and when empty hand control techniques are either not sufficient or are not tactically the best option for the safety of third parties, the suspect, or the officer. Intermediate weapons may be used when the officer reasonably believes it is unsafe to approach an aggressive subject and disengagement is not reasonable or practical, or when the officer reasonably believes the subject's actions are likely to cause physical harm to the officer or a third party.

The following are types of authorized intermediate weapons:

- a. Impact Weapons: an expandable baton can provide a means of protection the officer or others from injury. Escalating to an impact weapon is a means of controlling subjects

when the officer is facing defensive resistance and empty hand control is insufficient to overpower the resistance or when facing active aggression or aggravated active aggression (deadly force).

- b. Conducted Electrical Weapons (“CEWs”): may be used when the officer encounters active aggression resistance and reasonably believes it is unsafe to approach an aggressive or combative subject and disengagement is not reasonable or practical. Officers should be mindful that the CEW does not always work as intended and must be prepared to exercise other force options when it malfunctions, does not have the intended effect, or when continued use would endanger the subject.

- 5. Deadly Force: Use of force that is highly likely to cause serious injury or death. Deadly weapons include authorized firearms for certified officers. Use of a firearm is not the only means of employing deadly force. It may become necessary for officers to protect themselves or others with means other than a firearm. Use of deadly force requires that the officer reasonably believes the subject’s actions are likely to cause physical harm to the officer or a third party.

**F. Considerations for Use of CEWs.** The CEW may be used in situations where officers encounter active aggression resistance as defined in this section. However, any use of the CEW shall be reasonable and based on the totality of the circumstances. While gaining control of a situation, a CEW should be un-holstered, activated and pointed at a subject only when the officer has determined its use is warranted and is preparing to fire the weapon if the situation does not improve immediately. Certified officers may threaten use of the CEW as a show of force when the officer reasonably believes an aggressive or combative subject would escalate the incident or use of force, or when approaching an aggressive or combative subject is unsafe.

Before using a CEW, the officer should consider whether any of the following conditions exist that may create an undue hazard to the subject:

- 1. Women known to be pregnant;
- 2. Frail or elderly persons;
- 3. Juveniles;
- 4. Persons who are restrained in an elevated position or near water, and
- 5. Persons who are obviously under the influence of drugs or alcohol.

Prior to deploying a CEW on any of these subjects, the officer must be prepared to articulate why other reasonable options were unavailable. The CEW is not an option to thwart deadly force unless a secondary officer or law enforcement officer is present to deploy deadly force in the event the CEW is ineffective, unless it is the only viable option given the circumstances.

**G. Conditions for Use of Deadly Force.** The following are pre-requisites for determining a subject's actions constitute a risk or threat of imminent danger or serious bodily harm or death:

1. Ability or Apparent Ability: The subject possesses the ability or the apparent ability to utilize deadly force or to inflict serious bodily harm. Disparity in size, age, strength, gender, numbers, and the level of aggressiveness of the parties involved are all important factors when considering ability.
2. Opportunity: The subject is able to bring deadly force upon the officer or a third party.
3. Imminent Jeopardy: The subject is acting in such a manner that the subject will likely exercise deadly force to cause serious bodily injury or death at any moment.
4. All Reasonable Options are Exhausted: The conditions must be such that under the circumstances, the officer has no other objectively reasonable alternatives and all attempts to contain, de-escalate, or use intermediate options have failed or are inadequate. The officer should employ deadly force only as a last resort.

**H. Notification.** An officer involved in any use of force involving unholstering of firearm, the discharge of a firearm, the firing of a conducted electrical weapon, or that results in serious injury requiring medical attention shall:

1. Immediately notify the officer's supervisor as soon as practical, but not later than the next business day.
2. Submit a written incident report to the officer's supervisor, no later than the close of the third business day. If an officer is under criminal investigation in relation to the use of force incident, the court presiding judge, or the judge's designee, shall prepare the incident report. The written incident report shall include at a minimum:
  - a. A description of the events surrounding the use of force.
  - b. The names of all individuals involved in the incident.
  - c. The name of any third party involved in the incident.
  - d. The name of any known witnesses to the incident.
  - e. The disposition of the incident.
  - f. Any medical attention needed for any person in the incident.
  - g. Other information pertinent to the incident.
3. Upon review of the incident report, the supervisor shall immediately forward it to the presiding judge.



4. Upon review of the incident report, presiding judge, shall provide a copy to the director.
5. The presiding judge may request an exception or extension of time to submit this written report from the director.

**I. Review of Use of Force.**

1. The presiding judge shall review all incident reports pertaining to the use of force within two business days of receipt. Any incident reports that involve the use or display of a firearm shall follow the procedures outlined herein.
2. The presiding judge shall appoint a use of force committee within twenty business days of the incident or upon receipt of allegations of excessive force if any one of the following conditions exists:
  - a. Further investigation is warranted;
  - b. Deadly force was used;
  - c. Allegations of excessive force are brought forth;
  - d. Force greater than slight is used against a member of the public; or
  - e. Any person is injured significantly or in a manner that requires investigation.
3. The use of force committee shall consist of at least three members who have knowledge of the reasonable use of force and of defensive tactics. The committee shall include one representative from each of the following:
  - a. Department management other than the security director; and
  - b. A court security officer instructor certified by the director or other qualified person appointed by the director.
4. The presiding judge may appoint additional members as necessary to perform the duties of the committee in a specific review.
5. The use of force committee shall review the incident reports, interview witnesses and, when necessary, request that the presiding judge assign an investigator. The investigator may be drawn from an AZPOST recognized law enforcement agency.
6. Upon conclusion of the review, the use of force committee shall issue a written report within ten business days which shall include:
  - a. A summary of the incident;

- b. The committee's determination of whether the amount of force used violated any departmental policy or the ACJA and was reasonable and justified;
  - c. A dissenting opinion, if any; and
  - d. The signature of each committee member.
7. The use of force committee shall forward the report to the presiding judge. The security director shall have the authority to administer any discipline or remedial measures according to the local merit system.
  8. The presiding judge shall provide a copy of the use of force committee report to the director along with of any action taken.